FACT SHEET

# Americans with Disabilities Act - Title I relating to employment and medical examinations/inquiries

(Public Law 101-336)

**What are the general legal obligations concerning medical examinations and inquiries under the ADA?**

The ADA does not prevent employers from obtaining medical and related information necessary to evaluate the ability of applicants and employees to perform essential job functions, or to promote health and safety on the job. However, to protect individuals with disabilities from actions based on such information that are not job-related and consistent with business necessity, including protection of health and safety, the ADA imposes specific and differing obligations on the employer at three stages of the employment process.

1. Before making a job offer, an employer may not make any medical inquiry or conduct any medical examination.

2. After making a conditional job offer, and before a person starts work, an employer may make unrestricted medical inquiries, but may not refuse to hire an individual with a disability based on results of such inquiries, unless the reason for rejection is job-related and justified by business necessity.

3. After employment, any medical examination or inquiry required of an employee must be job-related and justified by business necessity. Exceptions are voluntary examinations conducted as part of employee health programs and examinations required by other federal laws.

**What are the requirements at the pre-employment, pre-offer stage?**

The ADA prohibits medical inquiries or medical examinations before making a conditional job offer to an applicant. This prohibition is necessary because the results of such inquiries and examinations frequently are used to exclude people with disabilities from jobs they are able to perform.

Some employers have medical policies or rely on doctors' medical assessments that overestimate the impact of a particular condition on a particular individual, and/or underestimate the ability of an individual to cope with his or her condition. Medical policies that focus on "disability," rather than the "ability" of a particular person, frequently will be discriminatory under the ADA.

**What examinations and inquiries are permitted in the pre-employment, post-offer stage?**

An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category. A post-offer medical examination does not have to be given to all entering employees in all jobs, only to those in the same job category.

The ADA does not require an employer to justify its requirement of a post-offer medical examination. An employer may wish to conduct a post-offer medical exam or make post-offer medical inquiries for purposes such as

- to determine whether an individual currently has the physical or mental qualifications necessary to perform certain jobs,

- to determine whether a person can perform a job without posing a "direct threat" to the health or safety of self or others, or

- compliance with medical requirements of other Federal laws.

Employers also may conduct post-offer medical examinations that are required by state laws, but may not take actions based on such examinations if the state law is inconsistent with ADA requirements.

After making a conditional job offer, an employer may make inquiries or conduct examinations to get any information that it believes to be relevant to a person's ability to perform a job.

A post-offer medical examination or inquiry, made before an individual starts work, need not focus on ability to perform job functions. Such inquiries and examinations themselves, unlike examinations/inquiries of employees, do not have to be "job-related" and "consistent with business necessity." However, if a conditional job offer is withdrawn because of the results of such examination or inquiry, an employer must be able to show that

- the reasons for the exclusion are job-related and consistent with business necessity, or the person is being excluded to avoid a "direct threat" to health or safety; and

- no reasonable accommodation was available that would enable the person to perform the essential job functions without a significant risk to health or safety, or that such an accommodation would cause undue hardship.

**How is risk of future harm to self or others assessed?**

The results of a medical inquiry or examination may not be used to disqualify persons who are currently able to perform the essential functions of a job, either with or without an accommodation, because of fear or speculation that a disability may indicate a greater risk of future injury, or absenteeism, or may cause future workers' compensation or insurance costs. An employer may use such information to exclude an individual with a disability where there is specific medical documentation, reflecting current medical knowledge, that this individual would pose a significant, current risk of substantial harm to health or safety.

Under the ADA, "medical" documentation showing that an individual constitutes a "direct threat" to health and safety does not mean only information from medical doctors. It may be necessary to obtain information from other sources, such as rehabilitation experts, occupational

or physical therapists, psychologists, and others knowledgeable about the individual and the disability concerned. It also may be more relevant to look at the individual's previous work history in making such determinations than to rely on an examination or tests by a physician.

Any medical assessment should focus on only two concerns: 1) whether the person currently is able to perform the specific job, with or without an accommodation; and 2) whether the person can perform the job without posing a "direct threat" to the health or safety of herself/himself or others.

When an individual is rejected on the basis of a "direct threat" to health and safety,

- the employer must be prepared to show a significant current risk of substantial harm (not a speculative or remote risk);

- the specific risk must be identified;

- the risk must be documented by objective medical or other factual evidence regarding the particular individual; and

- even if a genuine significant risk of substantial harm exists, the employer must consider whether it can be eliminated or reduced below the level of a "direct threat" by reasonable accommodation.

A doctor's evaluation of any future risk must be supported by a valid medical analysis indicating a high probability of substantial harm if this individual performed the particular functions of the particular job in question. Conclusions of general medical studies about work restrictions for people with certain disabilities will not be sufficient evidence, because they do not relate to a particular individual and do not consider reasonable accommodation.

**What does the ADA say about confidentiality and limitations on use of medical information?**

All information obtained from post-offer medical examinations and inquiries must be collected and maintained on separate forms, in separate medical files, and must be treated as a confidential medical record. Therefore, an employer should not place any medical-related material in an employee's personnel file.

All medical-related information must be kept confidential, with the following exceptions:

- supervisors and managers may be informed about necessary restrictions on the work or duties of an employee and necessary accommodations;

- first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or if any specific procedures are needed in the case of fire or other evacuations;

- government officials investigating compliance with the ADA and other Federal and state laws prohibiting discrimination on the basis of disability should be provided relevant information on request;

- relevant information may be provided to state workers' compensation offices or "second injury" funds, in accordance with state workers' compensation laws; and

- relevant information may be provided to insurance companies where the company requires a medical examination to provide health or life insurance for employees.

**Are voluntary "wellness" and health screening programs permissible?**

An employer may conduct voluntary medical examinations and inquiries as part of an employee health program (such as medical screening for high blood pressure, weight control, and cancer detection), providing that participation in the program is voluntary, information obtained is maintained according to the confidentiality requirements of the ADA, and the information is not used to discriminate against an employee.

**What does the ADA permit with respect to medical examinations and inquiries of current employees?**

The ADA's requirements concerning medical examinations and inquiries of employees are more stringent that those affecting applicants who are being evaluated for employment after a conditional job offer. In order for a medical examination or inquiry to be made of an employee, it must be job-related and consistent with business necessity. The need for the examination may be triggered by some evidence of problems related to job performance or safety, or an examination may be necessary to determine whether individuals in physically demanding jobs continue to be fit for duty. In either case, the scope of the examination also must be job-related.

Medical examinations or inquiries may be job-related and necessary under several circumstances including

- when an employee is having difficulty performing his or her job effectively,
- when an employee becomes disabled, or
- when examination is necessary for reasonable accommodation purposes.

*The above information was summarized and excerpted from the EEOC Technical Assistance Manual on Title I of the ADA, published January 26, 1992.*


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